

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 3769

To promote the construction in the United States of modern, efficient documented vessels suitable for commercial and national defense purposes, to strengthen the defense industrial base, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1994

Ms. SCHENK (for herself, Mr. ANDREWS of Maine, Mr. DELLUMS, Mr. FILNER, Mr. HOCHBRUECKNER, Mr. HUNTER, Mr. LIPINSKI, Mr. STUDDS, Mr. TAYLOR of Mississippi, and Mr. TRAFICANT) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

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## A BILL

To promote the construction in the United States of modern, efficient documented vessels suitable for commercial and national defense purposes, to strengthen the defense industrial base, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Merchant Marine Revi-  
5       talization Act of 1994”.

6       **SEC. 2. FINDINGS, PURPOSES, AND POLICY.**

7       (a) FINDINGS.—Congress finds the following:

1           (1) The United States-flag merchant fleet,  
2           which is the primary means of transporting vital  
3           military and critical raw material cargo in the event  
4           of national emergencies, the United States shipyard  
5           industry, which designs and constructs all Navy ves-  
6           sels and is a mobilization base in the event of na-  
7           tional emergency, and domestic producers of marine  
8           equipment, which are essential to the construction of  
9           commercial and naval vessels, serve essential na-  
10          tional security functions.

11          (2) The United States shipbuilding industry is  
12          encumbered in the international ship construction  
13          market by significant subsidies and anticompetitive  
14          practices that impede the ability of United States  
15          firms to compete on a fair and equitable basis.

16          (3) The United States shipbuilding industry en-  
17          counters costs of production due to regulatory meas-  
18          ures required by the United States that exceed the  
19          standards imposed internationally.

20          (4) The United States-flag merchant fleet has  
21          dwindled in size to the point that United States-flag  
22          vessels now carry less than 4 percent of the ocean  
23          borne trade of the United States.

24          (5) The United States shipyard industry cur-  
25          rently has no orders for new construction of large

1 commercial vessels, several major shipyards are ex-  
2 perienicing severe financial conditions, and the indus-  
3 try is laying-off thousands of employees.

4 (6) Skilled labor to crew the United States mer-  
5 chant marine and to construct new vessels is at a  
6 precariously low level.

7 (7) The United States-flag merchant fleet, the  
8 United States shipyard industry, and the domestic  
9 marine equipment suppliers, have decreased in size  
10 to the point that the bulk sealift capability and ves-  
11 sel construction and repair mobilization capacity of  
12 the United States are dangerously inadequate.

13 (8) The United States shipbuilding industry, by  
14 effectively transitioning from defense production to  
15 global competitiveness, has the potential to become  
16 an exporter of ships, thereby providing jobs, paying  
17 taxes, and earning foreign exchange.

18 (9) The most equitable and cost-effective means  
19 of promoting the United States-flag merchant fleet  
20 and the United States shipyard industry is to re-  
21 serve a certain portion of cargo imports for United  
22 States-flag merchant vessels designed and built in  
23 the United States.

24 (b) PURPOSE AND POLICY.—It is the purpose and  
25 policy of the Congress in this Act—

1           (1) to take immediate and positive steps to pro-  
2           mote the orderly and rapid re-growth of the United  
3           States-flag merchant fleet to transport at least 30  
4           percent of certain imports of the United States on  
5           United States-flag vessels by January 1, 2000, to  
6           ensure viable merchant marine and shipbuilding in-  
7           dustries;

8           (2) to assist and cooperate with the importers  
9           of designated commodities so that they will be able  
10          to ship their imported goods in United States-flag  
11          vessels in a commercially practicable manner;

12          (3) to encourage the design and construction by  
13          the United States shipyard industry of new, efficient  
14          merchant vessels;

15          (4) to require the maintenance and repair of  
16          United States-flag vessels in United States shipyards  
17          unless there is an emergency on a voyage;

18          (5) to eliminate foreign subsidies and anti-  
19          competitive practices and make the United States  
20          merchant marine and shipbuilding industries inter-  
21          nationally competitive by the turn of the century;

22          (6) to preserve existing and create additional  
23          essential skilled employment in the merchant marine  
24          and shipbuilding industries and their supplier indus-  
25          tries;

1           (7) to complement and support existing efforts  
2           to preserve viable and healthy merchant marine and  
3           shipbuilding industries for the benefit of the econ-  
4           omy of the United States, the balance of payments  
5           of the United States, and the national defense; and

6           (8) to preclude the monopolization of the ship-  
7           ping industry by foreign-flag vessels.

8   **SEC. 3. UNITED STATES-FLAG TRANSPORT OF CERTAIN IM-**  
9                           **PORTED CARGOES REQUIRED.**

10          Section 901 of the Merchant Marine Act, 1936 (46  
11   App. U.S.C. 1241) is amended by adding at the end the  
12   following new subsection:

13          “(d) UNITED STATES-FLAG TRANSPORT OF CERTAIN  
14   IMPORTED CARGOES REQUIRED.—

15               “(1) UNITED STATES-FLAG TRANSPORT RE-  
16   QUIRED.—The Secretary shall issue regulations  
17   that—

18                   “(A) ensure that of the total amount of oil  
19                   in bulk that is imported each year and that is  
20                   transported on seagoing vessels in the course of  
21                   that importation, and of the total amount of  
22                   motor vehicles that is imported each year that  
23                   is so transported, not less than the percentage  
24                   applicable under paragraph (2) is so trans-  
25                   ported only on vessels that are documented

1 under the laws of the United States and other-  
2 wise are eligible vessels; and

3 “(B) require that of the total amount of  
4 each type of covered cargo that a person im-  
5 ports in a year, not less than the percentage ap-  
6 plicable for that year under paragraph (2) shall  
7 be complying covered cargoes.

8 “(2) MINIMUM PERCENTAGE APPLICABLE.—

9 “(A) OIL IN BULK.—Except as otherwise  
10 provided in this subsection, the percentage ap-  
11 plicable under this paragraph to importation of  
12 oil in bulk is as follows:

13 “(i) In the case of oil in bulk trans-  
14 ported in the course of that importation on  
15 seagoing vessels of 200,000 deadweight  
16 tons or greater—

17 “(I) before 1997, 4 percent;

18 “(II) in 1997, 8 percent;

19 “(III) in 1998, 12 percent;

20 “(IV) in 1999, 16 percent;

21 “(V) in 2000, 20 percent;

22 “(VI) in 2001, 25 percent; and

23 “(VII) in each year after 2001,

24 30 percent.

1           “(ii) In the case of oil in bulk trans-  
2           ported in the course of that importation on  
3           seagoing vessels of less than 200,000 dead-  
4           weight tons—

5                   “(I) before 1998, 10 percent;

6                   “(II) in 1998, 15 percent;

7                   “(III) in 1999, 20 percent;

8                   “(IV) in 2000, 25 percent; and

9                   “(V) in each year after 2000, 30

10                  percent.

11           “(B) MOTOR VEHICLES.—Except as other-  
12           wise provided in this paragraph or paragraph  
13           (6), the percentage applicable under this para-  
14           graph to importation of motor vehicles is—

15                   “(i) before 1995, 4 percent;

16                   “(ii) in 1995, 5 percent;

17                   “(iii) in 1996, 10 percent;

18                   “(iv) in 1997, 20 percent;

19                   “(v) in 1998, 30 percent;

20                   “(vi) in 1999, 40 percent; and

21                   “(vii) in each year after 1999, 50 per-

22                  cent.

23           “(C) REDUCTION OF PERCENTAGE FOR  
24           LACK OF AVAILABLE ELIGIBLE VESSELS.—

1           “(i) IN GENERAL.—The Secretary  
2           may reduce a percentage otherwise applica-  
3           ble in a year for a covered cargo under  
4           subparagraph (A) or (B), if—

5                   “(I) the Secretary determines  
6                   that the number of eligible vessels (in-  
7                   cluding eligible vessels on order and  
8                   scheduled to be ready for commercial  
9                   service) that are available at fair and  
10                  reasonable rates to transport the  
11                  amount of the covered cargo expected  
12                  to be imported in that year is not ade-  
13                  quate to enable importers of the cov-  
14                  ered cargo to comply with the percent-  
15                  age otherwise applicable; and

16                  “(II) the percentage, as reduced,  
17                  will ensure, in the manner most equi-  
18                  table and commercially practicable for  
19                  all importers, the use of all eligible  
20                  vessels that the Secretary determines  
21                  are available to provide that trans-  
22                  port.

23           “(ii) TERMINATION OF REDUCTION.—  
24           Any reduction of a percentage under this  
25           subparagraph shall not apply after the



1 number of eligible vessels that are available  
2 at fair and reasonable rates to transport a  
3 covered cargo is adequate to enable import-  
4 ers of the covered cargo to comply with the  
5 percentage otherwise applicable under sub-  
6 paragraph (A) or (B).

7 “(iii) DETERMINATION OF AVAILABLE  
8 VESSELS REQUIRED.—Each year the Sec-  
9 retary shall determine the number of eligi-  
10 ble vessels that are available at fair and  
11 reasonable rates to transport each type of  
12 covered cargo.

13 “(D) REDUCTION OF PERCENTAGE FOR  
14 NATIONAL EMERGENCY.—The President may  
15 reduce a percentage otherwise applicable in a  
16 year under subparagraph (A) or (B), if the  
17 President—

18 “(i) determines that an emergency ex-  
19 ists justifying the reduction to protect the  
20 national interests of the United States;  
21 and

22 “(ii) issues a statement in writing of  
23 the reasons for that determination.

24 “(3) EXEMPTIONS.—The requirements under  
25 this subsection shall not apply to—

1           “(A) importation of oil in bulk by a person  
2           in any year in which the total amount of oil in  
3           bulk imported by the person—

4                   “(i) does not exceed an average daily  
5                   amount of 30,000 barrels per day, and

6                   “(ii) does not exceed the number of  
7                   barrels used by the person in that year; or

8           “(B) importation of motor vehicles by a  
9           person in any year in which the total number  
10          of motor vehicles imported by the person does  
11          not exceed a de minimis number of motor vehi-  
12          cles determined by the Secretary that would not  
13          have an impact on the implementation of this  
14          subsection.

15          “(4) TREATMENT OF RELATED PERSONS.—In  
16          determining for purposes of paragraph (1) the  
17          amount of a covered cargo imported by a person, the  
18          Secretary shall include covered cargo that is im-  
19          ported by any other person who controls, is con-  
20          trolled by, or is under common control with, the per-  
21          son with respect to whom the determination is made.

22          “(5) ISSUANCE OF CREDITS AND USE IN LIEU  
23          OF COMPLIANCE.—

1           “(A) ESTABLISHMENT OF SYSTEM.—The  
2           Secretary shall establish in regulations under  
3           paragraph (1) a system under which—

4                   “(i) the Secretary shall issue credits  
5                   to a person for amounts of a complying  
6                   covered cargo that are imported by the  
7                   person in a year in excess of the applicable  
8                   percentage for the complying covered cargo  
9                   for the year under paragraph (2) and of  
10                  any amount the person is required to re-  
11                  port under paragraph 9(C);

12                  “(ii) those credits may be transferred  
13                  to another person; and

14                  “(iii) a person may redeem any of  
15                  those credits held by the person in lieu of  
16                  complying in that year with paragraphs  
17                  (1)(B) and (9)(C).

18           “(B) IMPORTER CERTIFICATION.—Each  
19           person that imports a covered cargo in any year  
20           after 1993 shall submit to the Secretary, before  
21           the end of January of the following year, a  
22           sworn statement certifying—

23                   “(i) the amount of each type of cov-  
24                   ered cargo that was imported by the per-

son in the year covered by the certification;  
and

“(ii) the percentage of each of those  
amounts that was a complying covered  
cargo.

“(6) PHASE OUT OF REQUIREMENTS.—

“(A) IN GENERAL.—The Secretary shall  
phase out the requirements of this subsection,  
in accordance with subparagraphs (B) and (C),  
if—

“(i) there is in force for the United  
States and implemented by the Congress  
an international agreement that eliminates  
shipbuilding subsidies among the 10 coun-  
tries with the largest production of com-  
mercial vessels; and

“(ii) the Secretary, after due inves-  
tigation, determines and reports to the  
Congress that all shipbuilding subsidies  
among those countries have in fact been  
eliminated.

“(B) REDUCTION OF APPLICABLE PER-  
CENTAGE.—The Secretary shall phase out the  
requirements of this subsection pursuant to  
subparagraph (A) by reducing each year the

1 percentages otherwise applicable in the year  
2 under paragraph (2).

3 “(C) ASSURING PARTICIPATION OF EXIST-  
4 ING ELIGIBLE VESSELS.—The Secretary shall  
5 reduce applicable percentages pursuant to sub-  
6 paragraph (B) in a manner that will reasonably  
7 ensure that each eligible vessel constructed  
8 under a contract entered into after the date of  
9 the enactment of the Maritime Revitalization  
10 Act of 1994 and before the date of the deter-  
11 mination under subparagraph (A)(ii) pursuant  
12 to which the reduction is made, will have the  
13 opportunity to participate in the transportation  
14 of covered cargoes for the lesser of the eco-  
15 nomic life of the vessel or the 20-year period  
16 beginning on the date of the completion of con-  
17 struction of the vessel.

18 “(D) REINSTATEMENT OF REQUIRE-  
19 MENTS.—Notwithstanding any determination  
20 by the Secretary under subparagraph (A)(ii)  
21 that subsidies have been eliminated, if the Sec-  
22 retary, in consultation with the United States  
23 Trade Representative and the heads of other  
24 Federal agencies, finds at any time that any of  
25 the subsidies have been resumed, then—

1           “(i) the Secretary shall reinstate the  
2           requirements of this subsection; and

3           “(ii) any reductions in percentages  
4           otherwise applicable under paragraph (2)  
5           that were made pursuant to the determina-  
6           tion under subparagraph (A)(ii) of this  
7           paragraph shall not apply.

8           “(7) VESSEL FINANCING.—If the Secretary de-  
9           termines that inadequate commercial financing ex-  
10          ists to construct new vessels of a design appropriate  
11          to meet the requirements of this subsection, the Sec-  
12          retary may guarantee that financing under title XI.

13          “(8) IMPLEMENTATION, GENERALLY.—

14               “(A) ENSURING FAIR PARTICIPATION.—In  
15               implementing this subsection, the Secretary  
16               shall ensure fair and reasonable participation  
17               by appropriate types and sizes of eligible ves-  
18               sels, in the transportation of complying covered  
19               cargoes from all geographic areas in which the  
20               cargoes originate.

21               “(B) ACTIONS BY OTHER AGENCIES.—The  
22               head of each agency and each instrumentality  
23               of the United States Government, and the offi-  
24               cers and employees of those agencies and in-  
25               strumentalities, shall take all appropriate ac-

1           tions to comply with, implement, and enforce  
2           the requirements of this subsection.

3           “(9) PENALTIES.—

4                 “(A) IMPOSITION OF CIVIL PENALTY.—

5           Any person who is determined by the Secretary,  
6           on the record after an opportunity for a hearing  
7           in accordance with section 554 of title 5,  
8           United States Code, to have violated this sub-  
9           section or any regulation issued under this sub-  
10          section, shall be liable to the United States for  
11          a civil penalty assessed by the Secretary by  
12          written notice, in an amount determined under  
13          subparagraph (B).

14          “(B) AMOUNT OF CIVIL PENALTY.—The  
15          amount of a civil penalty under subparagraph  
16          (A) shall be the equal to—

17                 “(i) the amount of the economic bene-  
18                 fit the Secretary determines the person de-  
19                 rived from the activity constituting the vio-  
20                 lation; plus

21                 “(ii) 10 percent of that amount.

22          “(C) INCREASE IN REQUIRED IMPORTS OF  
23          COMPLYING COVERED CARGO.—If the Secretary  
24          determines under this paragraph that the  
25          amount of a type of complying covered cargo

1 that a person imported in a year was less than  
2 the amount of that type of complying covered  
3 cargo the person was required to import that  
4 year under this subsection, the Secretary shall  
5 require the person to—

6 “(i) import in the year following the  
7 year in which the determination is made  
8 an amount of that type of complying cov-  
9 ered cargo that is equal to the shortfall, in  
10 addition to any amount of that type of  
11 complying covered cargo the person is re-  
12 quired to import to comply with this sub-  
13 section; or

14 “(ii) redeem credits equivalent to that  
15 amount under the system established  
16 under paragraph (5)(A).

17 “(10) EFFICIENCY REPORT.—The Secretary  
18 shall report to the Congress in 1997 on—

19 “(A) the progress made by the United  
20 States shipbuilding and merchant marine indus-  
21 tries in increasing the efficiency of the con-  
22 struction and operation of documented vessels  
23 and thereby achieving international competitive-  
24 ness by 2001, through improvements in the cost  
25 of—



1 “(i) construction, including design;

2 “(ii) equipment and materials; and

3 “(iii) operations, including labor;

4 “(B) the subsidies and anticompetitive  
5 measures of foreign countries in their shipbuild-  
6 ing and merchant marine industries; and

7 “(C) the costs imposed on the shipbuilding  
8 and merchant marine industries of the United  
9 States due to regulatory measures of the  
10 United States.

11 “(11) ANNUAL REPORT.—the Secretary shall  
12 review, evaluate, and report annually to the Con-  
13 gress and the President on the implementation of  
14 this subsection, together with recommendations con-  
15 cerning the requirements of this subsection.

16 “(12) REGULATIONS.—

17 “(A) ISSUANCE.—The Secretary of Trans-  
18 portation shall issue regulations implementing  
19 this subsection by not later than 6 months after  
20 the date of the enactment of the Merchant Ma-  
21 rine Revitalization Act of 1994.

22 “(B) VESSEL AVAILABILITY AND RATES.—  
23 Regulations issued under this paragraph shall  
24 include regulations that establish a methodology  
25 for determining the availability of United

1 States-flag vessels and that establish fair and  
2 reasonable rates for those vessels. In promul-  
3 gating those regulations, the Secretary shall  
4 seek to develop a methodology which accounts  
5 for variations in charter and vessel types, voy-  
6 age lengths, and other characteristics which  
7 may require special consideration (including  
8 cost variations over time) and which affords  
9 vessel operators a reasonable profit calculated  
10 to promote continued acquisition of new vessels  
11 from United States shipyards. The Secretary  
12 shall publish on a regular and frequent basis  
13 the rates developed under this section.

14 “(13) DEFINITIONS.—In this subsection:

15 “(A) COMPLYING COVERED CARGO.—The  
16 term ‘complying covered cargo’ means a covered  
17 cargo that is transported by seagoing vessel in  
18 the course of importation (including transpor-  
19 tation directly to the United States from the  
20 original point of production, or indirectly from  
21 that point through any intermediate point) only  
22 on an eligible vessel.

23 “(B) COVERED CARGO.—The term ‘cov-  
24 ered cargo’ means oil in bulk or a motor vehicle  
25 that is—

1 “(i) imported after the date of the en-  
2 actment of the Maritime Revitalization Act  
3 of 1994; and

4 “(ii) transported in the course of that  
5 importation (including transportation di-  
6 rectly to the United States from the origi-  
7 nal point of production, or indirectly from  
8 that point through any intermediate point)  
9 on a seagoing vessel;

10 “(C) ELIGIBLE VESSEL.—The term ‘eligi-  
11 ble vessel’ means a vessel—

12 “(i) that is a documented vessel (as  
13 that term is defined in section 2101 of title  
14 46, United States Code);

15 “(ii) that is a seagoing vessel designed  
16 to transport oil in bulk or motor vehicles;

17 “(iii) that is built in the United  
18 States;

19 “(iv) that is constructed from compo-  
20 nents (including the hull, superstructure,  
21 equipment, and materials) from domestic  
22 sources, except that this clause does not  
23 apply—

24 “(I) with respect to any compo-  
25 nent that is not available from 2 or

1 more domestic sources in an amount  
2 of time that reasonably allows compli-  
3 ance with the requirements of this  
4 subsection; or

5 “(II) to a vessel that was built  
6 before the date of the enactment of  
7 the Merchant Marine Revitalization  
8 Act of 1994;

9 “(v) that is less than 20 years old;

10 “(vi) that complies with all applicable  
11 Federal laws, including all applicable Fed-  
12 eral environmental requirements and safety  
13 requirements; and

14 “(vii) for which all work performed in  
15 overhauling, repairing, and maintaining  
16 the vessel after the date of the enactment  
17 of the Merchant Marine Revitalization Act  
18 of 1994 is performed in shipyards in the  
19 United States, except for emergency voy-  
20 age repairs.

21 “(D) IMPORT.—The term ‘import’ means

22 to—

23 “(i) bring covered cargo into the cus-  
24 toms territory of the United States; and

1                   “(ii) be primarily liable for payment  
2                   of any duties for that covered cargo.

3                   “(E) MOTOR VEHICLE.—The term ‘motor  
4                   vehicle’ means complete passenger automobiles,  
5                   trucks, commercial cars and buses, motorcycles,  
6                   and special purpose motor vehicles which are  
7                   primarily for highway use.

8                   “(F) OIL.—The term ‘oil’ means—

9                   “(i) crude oil; or

10                   “(ii) any of the following products re-  
11                   fined or derived from crude oil: unfinished  
12                   fuels, gasoline, kerosene, aviation fuels,  
13                   naphtha, cracking stocks, distillate heating  
14                   oil, diesel oil, and residual oils.

15                   “(G) SECRETARY.—The term ‘Secretary’  
16                   means the Secretary of Transportation.”.

○

HR 3769 IH——2